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To: Microsoft ATR
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Subject: Microsoft Settlement

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To: Renata B. Hesse
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I would like to comment on the proposed settlement in the antitrust case against Microsoft Corporation, as provided for in the Tunney Act. I believe the proposed settlement will operate to prevent, rather than foster, competition in the market for operating systems and applications, and will allow Microsoft to continue its prior anticompetitive behavior with little restraint. For example:

- Section III.H.3 of the proposed judgement requires independent vendors (ISV's) who offer competing middleware to meet "reasonable technical requirements" seven months before new releases of the Windows operating system, but it makes no requirement on Microsoft to -disclose- those requirements before this deadline. ISV's are thus dependent on the simple goodwill of Microsoft to voluntarily disclose those requirements, and Microsoft can prevent ISVs from meeting the seven-month deadline by simply failing to disclose the requirements in advance.

- Definition U of the proposed judgement limits the definition of "Windows Operating System Product" to a limited subset of the OS products currently offered by Microsoft. It excludes current OS products such as Windows CE, Pocket PC, and Windows XP Tablet PC Edition. This overly narrow definition allows Microsoft to maintain its monopoly on Intel-compatible operating systems simply by basing some part of its future OS development on these excluded OS products and claiming that they are exempt from the restrictions of the proposed judgement because of that lineage - even if such future products are targeted to the desktop/portable computer market currently served by the OS products restricted in the judgement.

For these reasons and others, I believe the proposed judgement will allow Microsoft's current anti-competitive behaviors to continue and will thereby prevent the entry of viable competitors into the operating systems market. The settlement is therefore not in the public interest

and should not be adopted without thorough revision.

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